

ESTTA Tracking number: **ESTTA1188321**

Filing date: **02/02/2022**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91273569
Party	Plaintiff DAMM, LLC
Correspondence address	PAUL DIETZ DIETZ LAW OFFICE LLC 4975 WILDERNESS LAKE CIR ELKO NEW MARKET, MN 55020 UNITED STATES Primary email: paul@dietzlawoffice.com 9522012008
Submission	Opposition/Response to Motion
Filer's name	Pau Dietz
Filer's email	paul@dietzlawoffice.com
Signature	/Paul Dietz/
Date	02/02/2022
Attachments	Response_against_motion_to_extend_time.pdf(103932 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No.: 90/453,221

For the mark: Hammer-Schlagen

Published in the Official Gazette of August 24, 2021

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DAMM, LLC

Opposer,

Opposition No. 91/273,569

WRB, Inc.

Applicant.

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**OPPOSER'S RESPONSE TO APPLICANT'S MOTION FOR EXTENSION OF TIME**

Because Applicant's motion for extension of time is not made in good faith, but rather is made for purposes of delay, Opposer opposes the motion. In accordance with TBMP §509.01(a) close scrutiny is given to requests for extension of time. Further, good cause must be demonstrated. Delaying the filing of an Answer because there is a pending motion to suspend is not the type of good cause that justifies delays. Applicant has not shown that it has acted diligently to prepare an Answer to the opposition.

Applicant filed this "goods based" application on January 7, 2021. Applicant then contacted Opposer and demanded that it stop selling a combination of a hammer, nail and wood product under the registered mark MINNESCHLAGEN. In response, Opposer indicated it would oppose the present application if it was published for opposition. The day before this application was published for opposition Applicant filed

a lawsuit against Opposer and two individuals and their wives. The civil action asserts service mark registrations against Opposer. A few days later Applicant filed an emergency motion for preliminary injunction. That motion has been denied (see Opposer's Response in Opposition to Applicant's Motion to Suspend, Exhibit B).

Rather than answering the substance of this opposition, applicant seeks to avoid the facts and filed a motion to suspend this proceeding. Aware of the deadline to file an Answer in this matter, rather than diligently prepare an Answer, applicant chose to instead seek an extension of time to file an Answer.

Applicant's request for suspension, and attempts to avoid filing an answer in this matter are mere tactical gamesmanship seeking to gain an advantage on burdens of proof and contestability of a mark. Applicant has not used the applied for mark in interstate commerce on the designated goods since 1999 - the date alleged by Applicant (see Opposer's response to applicant's motion to suspend, Exhibit A).

#### **IV. CONCLUSION**

Opposer recognizes that motions for extensions of time are routinely granted when good cause is shown. However, in this matter, Applicant seeks an extension of time to delay having to explain the misrepresentations made in its application. A delay in time is discretionary, however, delaying a determination of fraud, genericness and descriptiveness will unduly prejudice the Opposer and provide no benefit to the public, this tribunal, or the District Court.

WHEREFORE, Opposer believes and avers that it will be damaged by Applicant's request for extension of time and respectfully requests that Applicant's motion for extension of time be denied.

Dated: February 2, 2022

Respectfully Submitted

s/ Paul Dietz

Paul T. Dietz (#237838)

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**ATTORNEY FOR OPPOSER**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2022 I caused to have electronically filed the foregoing with the ESTTA System which in turn automatically generates a Notice of Electronic Filing (NEF) to all parties in the case. I further certify that a copy of the Motion for Default Judgment was sent via email to applicant as follows:

WRB, INC.  
James Martin, CEO  
5865 Neal Ave N / #113  
Stillwater, MN 55082  
trademark@hammerschlagen.com

Dated: February 2, 2022

Respectfully Submitted,

s/ Paul Dietz  
Paul T. Dietz (#237838)  
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**ATTORNEY FOR OPPOSER**